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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,397	12/04/2000	Daniel Scott Fritsch	00013-001R1	6523

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EXAMINER

SUBRAMANIAN, NARAYANSWAMY

ART UNIT	PAPER NUMBER
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3691

MAIL DATE	DELIVERY MODE
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03/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/729,397

Applicant(s)

FRITSCH ET AL.

Examiner

Narayanswamy Subramanian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to applicant's communication filed on April 20, 2007. Amendments to the claims made on April 6, 2005 and amendments to the specification made July 28, 2006 have not been entered as discussed below. Claims 1-6 are currently pending in the application and have been examined. The rejections and response to arguments are stated below.

Specification

2. The amendment filed July 28, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Phrases such as "individual bid", "individual buy bid" and "individual sell bid" in paragraphs 32-34 of the specification are not supported by the description of the invention at the time of filing.

Applicant is required to cancel the new matter in the reply to this Office Action.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to support the subject matter set forth in the claims. The specification, as originally filed does not provide support for the invention as now claimed.

The test to be applied under the written description portion of 35 U.S.C. § 112, first paragraph, is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of later claimed subject matter. Vas-Cat,

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Inc. v. Mahurkar, 935 F. 2d 1555, 1565, 19 USPQ2d 111, 1118 (Fed. Cir. 1991), reh'rg denied (Fed. Cir. July 8, 1991) and reh'rg, en banc, denied (Fed. Cir. July 29, 1991).

Claims 1-6 include the limitations "graphically displaying an individual ask bid, graphically displaying an individual buy bid, graphically displaying a spread having a plurality of the incremental bid levels between the graphically displayed individual ask bid and the graphically displayed individual buy bid, and reconfiguring the scaled graph with the displayed individual ask bid, the individual buy bid". However, the specification does not provide written description disclosure to support the claimed limitations of "graphically displaying an individual ask bid, graphically displaying an individual buy bid, graphically displaying a spread having a plurality of the incremental bid levels between the graphically displayed individual ask bid and the graphically displayed individual buy bid, and reconfiguring the scaled graph with the displayed individual ask bid, the individual buy bid".

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in Such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, claims 1-6 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia (US Patent 6,272,474 B1) in view of Lupien et al (US Patent 5,845,266).

Claims 1-2, Garcia teaches a method utilizing a network computer system connectable to a plurality of monitors comprising the steps of: displaying an image of at least one scaled graph having incremental bid levels upon a computer monitor reflecting a range of monetary values (See Garcia Figure 5); graphically displaying an individual ask bid at a selected incremental bid level upon the scaled graph (See Garcia Figure 5, Abstract and Column 3 lines 22-27); graphically displaying an individual buy bid at a selected incremental bid level upon the scaled graph (See Garcia Figure 5, Abstract and Column 3 lines 22-27); and reconfiguring the scaled graph with the displayed ask bid and buy bid in response to new market information (See Garcia Figure 5, Abstract, Column 3 lines 22-27, Column 5 line 21 - Column 6 line 15 and claims 1-3). The bids and offers of market makers are individual bids and offers.

Garcia fails to explicitly teach the steps of graphically displaying a spread having a plurality of the incremental bid levels between an individual ask bid and an individual buy bid and reconfiguring the scaled graph with the spread in response to the spread decreasing to a select quantity justifying a reallocation of the incremental bid levels. However the limitation “in

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response to the spread decreasing to a select quantity justifying a reallocation of the incremental bid levels” is interpreted as intended use of the reconfiguring step and hence not given patentable weight.

Lupien teaches the steps of graphically displaying a spread having a plurality of the incremental bid levels between an ask bid and a buy bid and reconfiguring the scaled graph with the spread in response to the spread decreasing to a select quantity justifying a reallocation of the incremental bid levels (See Lupien abstract, Column 5 lines 13-21, Column 6 lines 48-52, Column 7 lines 35-48, Column 11 lines 21-61, claims 3-5) and wherein the reconfiguration of the incremental bid levels is determined by a mathematical formula (See Lupien Column 10 lines 5-15).

Both Garcia and Lupien are concerned with helping users analyze the trend in the market and help traders with price discovery. It would have been obvious to one with ordinary skill in the art at the time of invention to modify the Garcia invention to include the disclosure of Lupien. The combination of the disclosures taken as a whole suggests that it would have helped the bidders make more informed decisions by considering the spread information and the price discovery provided by the combination.

Claims 3-4, Garcia teaches a method utilizing a networked computer system having a plurality of coupled monitors, the method comprising the steps of: displaying a graphical scale upon a monitor (See Garcia Figure 5); displaying an individual buy bid upon the graphical scale (See Garcia Figure 5, Abstract and Column 3 lines 22-27); displaying an individual ask bid upon the graphical scale (See Garcia Figure 5, Abstract and Column 3 lines 22-27). (Also see Garcia

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Figure 5, Abstract, Column 3 lines 22-27, Column 5 line 21 - Column 6 line 15 and claims 1-3).

The bids and offers of market makers are individual bids and offers.

Garcia fails to explicitly teach the steps of displaying a plurality of incremental bid levels upon the graphical scale between the individual buy bid and the individual ask bid, wherein a quantity distribution and monetary valuation of each bid level is dependent upon a spread between the individual buy bid and the individual ask bid, and graphically redisplaying the graphical scale, the individual buy bid upon the graphical scale, and the individual ask bid upon the graphical scale in response to a narrowing of the spread between the individual buy bid and the individual ask bid with the entry of a new bid, wherein a new quantity distribution and a new monetary valuation of each incremental bid level is dependent upon the spread between the individual buy bid and the individual ask bid. The limitations “wherein a quantity distribution and monetary valuation of each bid level is dependent upon a spread between the individual buy bid and the individual ask bid” and “wherein a new quantity distribution and a new monetary valuation of each incremental bid level is dependent upon the spread between the individual buy bid and the individual ask bid” are interpreted as non-functional descriptive material because the step of displaying a plurality of incremental bid levels upon the graphical scale between the individual buy bid and the individual ask bid is performed regardless of the value of a quantity distribution and monetary valuation of each bid level. These limitations do not affect the step of displaying as currently claimed. Also the limitation “in response to a narrowing of the spread between the individual buy bid and the individual ask bid with the entry of a new bid” is interpreted as the intended use of the graphically redisplaying the graphical scale step.

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Lupien teaches the steps of displaying a plurality of incremental bid levels upon the graphical scale between the individual buy bid and the individual ask bid, and graphically redisplaying the graphical scale, the individual buy bid upon the graphical scale, and the individual ask bid upon the graphical scale in response to a narrowing of the spread between the individual buy bid and the individual ask bid with the entry of a new bid, wherein a new quantity distribution and a new monetary valuation of each incremental bid level is dependent upon the spread between the individual buy bid and the individual ask bid (See Lupien abstract, Column 5 lines 13-21, Column 6 lines 48-52, Column 7 lines 35-48, Column 11 lines 21-61, claims 3-5) and wherein the step of graphically displaying the graphical scale is determined by a mathematical formula (See Lupien Column 10 lines 5-15).

Both Garcia and Lupien are concerned with helping users analyze the trend in the market and help traders with price discovery. It would have been obvious to one with ordinary skill in the art at the time of invention to modify the Garcia invention to include the disclosure of Lupien. The combination of the disclosures taken as a whole suggests that it would have helped the bidders make more informed decisions by considering the spread information and the price discovery provided by the combination.

Claims 5 and 6, Garcia and Lupien combined teach the features recited in these claims (See also discussion of claims 1-4 above). A host computer network, remote computers including display means for displaying graphs and communication network means are inherent in these disclosures.

Response to Arguments

9. In response to Applicant's arguments "In Accordance with MPEP § 608.01(o), applicant submits that the addition of the term "individual" does not add a confusing variety of terms to the application. Further, applicant submits that the term "individual" has an easily understood ordinary meaning, and that one of ordinary skill in the art, upon reading the specification and drawings of the present application, would understand the recited bids to be "individual bids." Thus, no new matter is added to the application by way of the addition of the term "individual" to the specification and drawings", the Examiner respectfully disagrees. While the plain meaning of the term "individual" is clear, such language is not supported by the specification as originally filed. Only the term "user" has support in the specification as original filed. The user could be any trader including a broker buying/selling for his/her clients, institutional traders buying/selling for the institutional accounts, market makers and the like. The only reason why the Applicants want to amend the claims and the specification is because the prior art of record read on the claims before they were amended. One ordinary skill in the art, upon reading the specification and drawings of the present application, would not understand the recited bids to be "individual bids". Hence introduction of language such as "individual bid", "individual buy bid" and "individual sell bid" in the claims and in paragraphs 32-34 of the specification are not supported by the description of the invention at the time of filing.

In response to Applicant's arguments "The specification and drawings of the present application as filed clearly describe, as would be understood by one of skill in the art, that a user (or individual) enters an ask bid, and a user (or individual) can enter a sell bid. (See present application as published at paragraphs [0032] -- [0034]. The concept of "individual" bids is also

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shown, for example, in FIGS. 3-12 of the present application as filed. In addition, as described in the Abstract of the present application as filed, embodiments of the invention are directed to an auction system whereby a buyer can buy from a seller", the Examiner respectfully disagrees.

There is no disclosure in the specification as originally filed for language such as "a user (or individual) enters an ask bid, and a user (or individual) can enter a sell bid". The introduction of phrases such as "a user (or individual)" is clearly new matter. For the purpose of convenience and clarity the application as published at paragraphs [0032] -- [0034] is reproduced below:

"[0032] As shown in FIG. 4, a user, in this example a buyer, may disregard the automatic incremental increase in the next sell offer or buy bid shown by the cross hatched section in order to increase the user's bid in an amount greater than the one incremental level. To do so, the user moves the screen cursor 435 to the incremental level upon the buy bid selector 360 which represents the user's desired buy bid. Herein, the buyer has bypassed the automatic buy bid of \$41.00 and has instead moved the cursor to the \$44.00 increment level upon the buy bid selector 360. The user then initiates an entry signal by conventionally clicking upon the computer mouse left click key. Entry results monetary values in the graphical incremental level are shown in the new buy bid amount identifier window 390. Thus, the user is able to confirm the desired entry both graphically upon the buy bid selector 360 and numerically within the new bid amount identifier window 390. It should be noted that this is accomplished through conventional positioning recognition software by recording the relative x-y position of each element of the bid selector 310 or 360 and correlating it to the relative x-y position of the cursor 435. For example, a cursor position of 450/250 is correlated to the underlying scale wherein an x-y position of 450/250 indicates a bid amount of \$44.00. The user then finalizes entry of the bid amount by

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moving the cursor 435 to and clicking upon the new buy bid submit button 400.

[0033] As shown in FIG. 5, once the buy bid is accepted by the auctioneer the buy bid selector 360 and buy current bid amount window 370 are reconfigured to indicate the new buy bid amount of \$44.00. The current buyer identifier window 380 is also updated to indicate that the user's bid has been accepted and therefore that user is the current buyer with the indication of the current buyer being "YOU". The buy bid selector 360 and new buy bid amount identifier 390 are updated to indicate a new automatic incremental increase of one incremental level, i.e. the new buy bid level is increased to \$45.00.

[0034] With reference next to FIG. 6, should the seller user decrease the current sell bid amount from \$50.00 to \$47.00, either through a series of automatic transactions or by manually increasing the sell bid by more than one incremental level as previously describe through the use of the cursor 435, the spread between the sell current offer amount of \$47.00 and the buy current bid amount of \$44.00 is less than the preferred ten incremental levels. As such, the sell bid selector 310 and the buy bid selector 360 are graphically reconfigured so that the quantity of incremental bid levels and the associated monetary values associated with each incremental level is reduced, as previously discussed the incremental levels may be determined by simply mathematical formulas. Here, the incremental level is reduced from \$1.00 to 50 cents. It should be noted that the incremental level must be equal to or greater than a minimum value set by either market parameters or the seller of the goods. The system automatically changes the incremental level, and possibly the quantity of incremental bids within the spread, so that bidders can refine their bids as the spread decreases. This automatic reconfiguration of the graphics allows users to immediately recognize the narrowing of the spread and to recognize that the bid

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increments need not be as large. This aids in preventing bidders from unknowingly increasing the next bid beyond a recognized minimal increase.” Hence introduction of language such as “individual bid”, “individual buy bid” and “individual sell bid” in the claims and in paragraphs 32-34 of the specification are clearly not supported by the description of the invention at the time of filing.

In response to Applicant's arguments that Garcia does not describe a graph having incremental bid levels, an individual ask bid and an individual buy bid, the examiner respectfully disagrees. NASDAQ Level II data provides bid data and offer data for a market maker as discussed above. Figure 5 of Garcia for instance provides a graphical representation of this data for a market maker (Agent ABC).

In response to Applicant's arguments that Lupien does not teach any rescaling of graph as prices change, the examiner respectfully disagrees. For instance Lupien discloses that range and scale of each axis can be automatically set by the system (Lupien Column 6 lines 48-52). Also price range parameter can be set on an absolute or relative basis (Lupien Column 7 lines 35-47). Lupien also discloses that the displays could change according to market and trader requirements (Lupien Column 12 lines 17-26).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this

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case, both Garcia and Lupien are concerned with the problem of helping users analyze the trend in the market and help traders with price discovery. It would have been obvious to one with ordinary skill in the art at the time of invention to modify the Garcia invention to include the disclosure of Lupien. The combination of the disclosures taken as a whole suggests that it would have helped the bidders make more informed decisions by considering the spread information and the price discovery provided by the combination.

Applicant's other arguments with respect to the examined claims have been considered but are not persuasive.

Conclusion

10. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Narayanswamy Subramanian whose telephone number is (571) 272-6751. The examiner can normally be reached Monday-Thursday from 8:30 AM to

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7:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached at (571) 272-6771. The fax number for Formal or Official faxes and Draft to the Patent Office is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only. For more information about the PMR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dr. N. Subramanian
Primary Examiner
Art Unit 3691

October 14, 2007